

ceed \$5,000,000, including any contract alternatives or options, shall be limited, after a determination that adequate competition will be obtained thereby, to (1) American-owned bidders and (2) bidders from countries which permit or agree to permit substantially equal access to American bidders for comparable diplomatic and consular building projects, except that participation may be permitted by or limited to host-country bidders where required by international agreement or by the law of the host country or where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(b) Foreign laws and regulations; competitive status and adequacy; bidder qualifications

(1) Generally applicable laws and regulations pertaining to licensing and other qualifications to do business in the country in which the contract is to be performed shall not be deemed a limitation of access for purposes of this section.

(2) For purposes of determining competitive status, bids qualifying under subsection (a)(1) of this section shall be reduced by 10 per centum.

(3) A determination of adequacy of competition for purposes of subsection (a) of this section shall be made after advance publication by the Secretary of State of the proposed project, and receipt from not less than two prospective responsible bidders of intent to submit a bid or proposal. If competition is not determined to be adequate, contracts may be awarded without regard to subsection (a) of this section and this subsection.

(4) Bidder qualification under subsection (a) of this section shall be determined on the basis of nationality of ownership, the burden of which shall be on the prospective bidder. Qualification under subsection (a)(1) of this section shall require evidence of (A) performance of similar construction work in the United States, and (B) either (i) ownership in excess of fifty percent by United States citizens or permanent residents, or (ii) incorporation in the United States for more than three years and employment of United States citizens or permanent residents in more than half of the corporation's permanent full-time professional and managerial positions in the United States.

(5) Qualification under this section shall be established on the basis of determinations at the time bids are requested.

(c) Contracts for construction, etc., in United States

Contracts for construction, alteration, or repair in the United States for or on behalf of any foreign mission (as defined in section 202(a)(4)¹ of title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) may, pursuant to the authority of that title [22 U.S.C. 4301 et seq.], only be awarded to or performed by bidders qualifying under subsection (a) (1) or (2) or by nationals of the country for which the contract is being performed who are granted the right of entry into the United States for that purpose.

¹ See References in Text note below.

(d) Discretionary determinations by Secretary of State

Determinations under this section shall be committed to the discretion of the Secretary of State.

(e) Termination of requirements

This section shall cease to be effective when the Secretary of State determines that there are internationally-agree-upon² rules in effect on bidding for construction contracts.

(May 7, 1926, ch. 250, §11, as added Pub. L. 98-164, title I, §136, Nov. 22, 1983, 97 Stat. 1029.)

REFERENCES IN TEXT

Title II of the State Department Basic Authorities Act of 1956, referred to in subsec. (c), is title II of act Aug. 1, 1956, ch. 841, as added Aug. 24, 1982, Pub. L. 97-241, title II, §202(b), 96 Stat. 283, known as the Foreign Missions Act, which is classified principally to chapter 53 (§4301 et seq.) of this title. Section 202(a)(4) of title II was redesignated section 202(a)(3), and former section 202(a)(5) was redesignated section 202(a)(4), by Pub. L. 103-236, title I, §162(o)(1), Apr. 30, 1994, 108 Stat. 409. For complete classification of title II to the Code, see Short Title note set out under section 4301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4852 of this title.

§303. Annual report on overseas surplus properties

Not later than March 1 of each year, the Secretary of State shall submit to Congress a report listing overseas United States surplus properties that are administered under this chapter and that have been identified for sale.

(May 7, 1926, ch. 250, §12, as added Pub. L. 105-277, div. G, subdiv. B, title XXII, §2215, Oct. 21, 1998, 112 Stat. 2681-814.)

CHAPTER 9—FOREIGN WARS, WAR MATERIALS, AND NEUTRALITY

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| 406. | Interference with foreign trade. |
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SUBCHAPTER II—NEUTRALITY

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²So in original. Probably should be "internationally-agreed-upon".

- Sec.
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PROCLAMATIONS RESPECTING WAR AND NEUTRALITY

See notes preceding section 1 of Title 50, Appendix, War and National Defense.

SUBCHAPTER I—WAR MATERIALS

§ 401. Illegal exportation of war materials

(a) Seizure and forfeiture of materials and carriers

Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war or other articles in violation of law, or whenever it is known or there shall be probable cause to believe that any arms or munitions of war or other articles are intended to be or are being or have been exported or removed from the United States in violation of law, the Secretary of the Treasury, or any person duly authorized for the purpose by the President, may seize and detain such arms or munitions of war or other articles and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms or munitions of war or other articles. The Secretary of Commerce may seize and de-

tain any commodity (other than arms or munitions of war) or technology which is intended to be or is being exported in violation of laws governing such exports and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been used or is being used in exporting or attempting to export such articles. All arms or munitions of war and other articles, vessels, vehicles, and aircraft seized pursuant to this subsection shall be forfeited.

(b) Applicability of laws relating to seizure, forfeiture, and condemnation

All provisions of law relating to seizure, summary and judicial forfeiture and condemnation for violation of the customs laws, the disposition of the property forfeited or condemned or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. However, with respect to seizures and forfeitures of property under this section by the Secretary of Commerce, such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs law may be performed by such officers as are designated by the Secretary of Commerce or, upon the request of the Secretary of Commerce, by any other agency that has authority to manage and dispose of seized property. Awards of compensation to informers under this section may be paid only out of funds specifically appropriated therefor.

(c) Disposition of forfeited materials

Arms and munitions of war forfeited under subsection (b) of this section shall be delivered to the Secretary of Defense for such use or disposition as he may deem in the public interest, or, in the event that the Secretary of Defense refuses to accept such arms and munitions of war, they shall be sold or otherwise disposed of as prescribed under existing law in the case of forfeitures for violation of the customs laws.

(June 15, 1917, ch. 30, title VI, §1, 40 Stat. 223; June 17, 1930, ch. 497, title IV, §523, 46 Stat. 740; Aug. 13, 1953, ch. 434, §1, 67 Stat. 577; Pub. L. 105-119, title II, §211(a), Nov. 26, 1997, 111 Stat. 2487.)

REFERENCES IN TEXT

The customs laws, referred to in subsecs. (b) and (c), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-119, which directed the amendment of section 401 of title 22, United States Code, by inserting “The Secretary of Commerce may seize and detain any commodity (other than arms or munitions of war) or technology which is intended to be or is being exported in violation of laws governing such exports and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been used or is being used in exporting or attempting to export such articles.” after first sentence in subsec. (a), was executed by making the insertion in section 1(a) of act June 15, 1917, ch. 30, which is classified to this section, to reflect the probable intent of Congress.